

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CONSUMER FINANCIAL
PROTECTION BUREAU,
THE PEOPLE OF THE
STATE OF NEW YORK,
By Letitia James,
Attorney General of the
State of New York,
STATE OF COLORADO,
Ex rel, Philip J. Weiser,
Attorney General,
STATE OF DELAWARE,
Ex rel. Kathleen Jennings,
Attorney General,
State of Delaware,
THE PEOPLE OF THE
STATE OF ILLINOIS,
Through Attorney General
Kwame Raoul,
THE STATE OF MINNESOTA,
By its Attorney General
Keith Ellison,
THE STATE OF NORTH CAROLINA,
Ex rel. Joshua H. Stein,
Attorney General,
THE STATE OF WISCONSIN,

Plaintiffs,

v.

STRATFS, LLC,
Formerly known as Strategic
Financial Solutions, LLC.,
STRATEGIC CLIENT SUPPORT,
LLC, formerly known as
Pioneer Client Services, LLC,
STRATEGIC CS, LLC,
STRATEGIC FS BUFFALO, LLC,
STRATEGIC NYC, LLC,
BCF CAPITAL, LLC,
T FIN, LLC,
STRATEGIC CONSULTING, LLC,
VERSARA LENDING, LLC,

Docket Number:
1:24-cv-00040-EAW-MJR

Buffalo, New York
November 20, 2024

11:06 a.m.

MOTION HEARING

1 STRATEGIC FAMILY, INC.,
2 ANCHOR CLIENT SERVICES, LLC,
3 Now known as CS1 PAAS
4 Services, LLC,
5 BEDROCK CLIENT SERVICES, LLC,
6 BOULDER CLIENT SERVICES, LLC,
7 CANYON CLIENT SERVICES, LLC,
8 CAROLINA CLIENT SERVICES,
9 LLC,
10 GREAT LAKES CLIENT SERVICES,
11 LLC,
12 GUIDESTONE CLIENT SERVICES,
13 LLC,
14 HARBOR CLIENT SERVICES, LLC,
15 HEARTLAND CLIENT SERVICE,
16 LLC,
17 MONARCH CLIENT SERVICES, LLC,
18 Now known as CS2 PAAS
19 Services, LLC,
20 NEWPORT CLIENT SERVICES, LLC,
21 NORTHSTAR CLIENT SERVICES,
22 LLC,
23 OPTION 1 CLIENT SERVICES,
24 LLC,
25 PIONEER CLIENT SERVICING,
LLC,
ROCKWELL CLIENT SERVICES,
LLC,
ROYAL CLIENT SERVICES, LLC,
STONEPOINT CLIENT SERVICES,
LLC,
SUMMIT CLIENT SERVICES, LLC,
Now known as CS3 PAAS, LLC,
WHITESTONE CLIENT SERVICES,
LLC,
RYAN SASSON,
JASON BLUST,
JOHN DOES 1-50,
DANIEL BLUMKIN,
Relief Defendant,
ALBERT IAN BEHAR,
Relief Defendant,
STRATEGIC ESOP,
Relief Defendant,
STRATEGIC ESOT,
Relief Defendant,
TWIST FINANCIAL, LLC,
Relief Defendant,
DUKE ENTERPRISES, LLC,
Relief Defendant,

1 BLAISE INVESTMENTS, LLC,
Relief Defendant,
2 THE BLUST FAMILY
IRREVOCABLE TRUST THROUGH
3 DONALD J. HOLMGREN, TRUSTEE,
Relief Defendant,
4 JACLYN BLUST,
Relief Defendant,
5 LIT DEF STRATEGIES, LLC,
Relief Defendant,
6 RELIALIT, LLC,
Relief Defendant,
7 CLEAR CREEK LEGAL, LLC,
CREDIT ADVOCATES LAW FIRM,
8 LLC,
GREENSTONE LEGAL GROUP,
9 BRANDON ELLIS LAW FIRM,
LLC,
10 HAILSTONE LEGAL GROUP,
HALLOCK AND ASSOCIATES,
11 HARBOR LEGAL GROUP,
ANCHOR LAW FIRM, PLLC,
12 BEDROCK LEGAL GROUP,
BOULDER LEGAL GROUP,
13 CANYON LEGAL GROUP,
GREAT LAKES LAW FIRM,
14 HEARTLAND LEGAL GROUP,
LEVEL ONE LAW,
15 MEADOWBROOK LEGAL GROUP,
MONARCH LEGAL GROUP,
16 NEWPORT LEGAL GROUP, LLC,
NORTHSTAR LEGAL GROUP,
17 OPTION 1 LEGAL,
PIONEER LAW FIRM P.C.,
18 ROCKWELL LEGAL GROUP,
SPRING LEGAL GROUP,
19 ROYAL LEGAL GROUP,
SLATE LEGAL GROUP,
20 STONEPOINT LEGAL GROUP,
THE LAW FIRM OF
21 DEREK WILLIAMS, LLC,
WHITSTONE LEGAL GROUP,
22 WYOLAW, LLC,
CHINN LEGAL GROUP, LLC,
23 LEIGH LEGAL GROUP, PLLC,
HALLOCK & ASSOCIATES LLC,
24 GUSTAFSON CONSUMER LAW GROUP,
LLC,
25 MICHEL LAW, LLC,
THE LAW OFFICE OF

1 MELISSA MICHEL, LLC,
2 MOORE LEGAL GROUP, LLC. *

3 Defendants. *

4 * * * * *

5 FTR TRANSCRIPT OF PROCEEDINGS
6 BEFORE THE HONORABLE MICHAEL J. ROEMER
7 UNITED STATES CHIEF MAGISTRATE JUDGE

8 APPEARANCES:

9 For Consumer Financial
10 Protection Bureau:

CONSUMER FINANCIAL PROTECTION
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12 For The People of the
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22 Formerly known as
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23 Strategic CS, LLC,
Strategic FS Buffalo, LLC,
24 Strategic NYC, LLC,
BCF Capital, LLC,
25 T FIN, LLC,
Strategic Consulting, LLC,

1 Versara Lending, LLC,
2 Strategic Family, INC.,
3 Anchor Client Services, LLC,
4 Now known as CS1 PAAS
5 Services, LLC,
6 Bedrock Client Services, LLC,
7 Boulder Client Services, LLC,
8 Canyon Client Services, LLC,
9 Carolina Client Services, LLC,
10 Great Lakes Client Services, LLC,
11 Guidestone Client Services, LLC,
12 Harbor Client Services, LLC,
13 Heartland Client Service, LLC,
14 Monarch Client Services, LLC,
15 Now known as CS2 PAAS
16 Services, LLC,
17 Newport Client Services, LLC,
18 Northstar Client Services, LLC,
19 Option 1 Client Services, LLC,
20 Pioneer Client Servicing, LLC,
21 Rockwell Client Services,
22 LLC,
23 Royal Client Services, LLC,
24 Stonepoint Client Services,
25 LLC,
Summit Client Services, LLC,
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5 Hallock and Associates,
Harbor Legal Group,
6 Anchor Law Firm, PLLC,
Bedrock Legal Group,
7 Boulder Legal Group,
Canyon Legal Group,
8 Great Lakes Law Firm,
Heartland Legal Group,
9 Level One Law,
Meadowbrook Legal Group,
10 Monarch Legal Group,
Newport Legal Group, LLC,
11 Northstar Legal Group,
Option 1 Legal,
12 Pioneer Law Firm P.C.,
Rockwell Legal Group,
13 Spring Legal Group,
Royal Legal Group,
14 Slate Legal Group,
Stonepoint Legal Group,
15 The Law Firm of
Derek Williams, LLC,
16 Whitstone Legal Group,
Wyolaw, LLC,
17 Chinn Legal Group, LLC,
Leigh Legal Group, PLLC,
18 Hallock & Associates, LLC,
Gustafson Consumer Law Group,
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19 And
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20 On behalf of
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22 Valley National Bank:

22 PHILLIPS LYTLE LLP,
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6
7
8 Proceedings recorded by mechanical stenography,
transcript produced by computer.

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10
11
12 (Proceedings commenced at 11:06 a.m.)

13
14
15 **THE CLERK:** All rise.

16 The United States District Court for the Western
17 District of New York is now in session. The Honorable Michael
18 J. Roemer presiding.

19 We're here on the matter of Consumer Financial
20 Protection Bureau, et al, versus Strategic Financial Solutions,
21 et al. Case Number 24-CV-40, for a motion hearing.

22 Start with the plaintiffs. Plaintiff for the --
23 counsel for the plaintiff, please state your name for the
24 record.

25 **MR. SANDERS:** Joe Sanders on behalf of Consumer

1 the welcome call.

2 And so we certainly believe that they will need some
3 other third party to come in and take this consumer information.

4 And we don't think that's a viable option, given --
5 given how their the previous parties operated.

6 **THE COURT:** Well, Mr. Connors says they are not going
7 to -- that's not the way they are going to do it.

8 **MR. SANDERS:** Terry, are you guys -- you're not going
9 to hire any third parties?

10 **MR. CONNORS:** No. It's going to be done inhouse.

11 **THE COURT:** I assume they will hire more employees to
12 handle it.

13 **MR. CONNORS:** Well, there are some that have been
14 released by the Receiver. We will probably need a few more of
15 those lawyers.

16 **MR. BOYD:** Well, hold on. Are you looking for current
17 employees of the Receiver to provide services for Royal and
18 Hailstone?

19 **MR. CONNORS:** No. Right now, our plan is to do
20 everything inhouse.

21 **MR. BOYD:** Okay. And with attorneys supervising the
22 attorney work?

23 **MR. CONNORS:** Yes.

24 **MR. BOYD:** Okay. I -- and, Judge, I think we should
25 talk and see if we -- I mean, we were able to do it last time,

1 but I think see if we can come up with a stipulated order.

2 **THE COURT:** You weren't -- what about last time?

3 **MR. BOYD:** That we were able to reach a stipulated
4 order.

5 As you recall, last hearing, on the law firm
6 withdrawal for all of the other firms.

7 So I think perhaps seeing if we can reach an agreement
8 as well with respect for Royal and Hailstone makes some sense.

9 **MR. CONNORS:** In order to do that, Judge, do you have
10 any bullet points that you think need to be included that would
11 help us?

12 Because we would start -- I know you talked about the
13 doing it inhouse, doing it with the lawyers, not taking new
14 clients.

15 I think you mentioned --

16 **THE COURT:** I brought those up because you brought
17 them up.

18 **MR. CONNORS:** Yes.

19 **THE COURT:** Those are in your papers.

20 **MR. CONNORS:** They are. Yeah. I thought there was
21 one other thing you mentioned that you were concerned about.

22 **MR. BOYD:** Not selling the data maybe.

23 **MR. CONNORS:** Yes. That's fine.

24 **THE COURT:** Yeah. Yeah. How the data -- that's I
25 think critical to the plaintiff's concerns, right?

1 They are worried about how this data is going to be
2 used.

3 **MR. CONNORS:** Protection of the data.

4 **THE COURT:** Yeah.

5 **MR. CONNORS:** Okay. That's helpful.

6 **THE COURT:** You know, if you want to, I'll send
7 everybody an e-mail with bullet points, how about that?

8 I -- and then --

9 **MR. CONNORS:** Great.

10 **THE COURT:** -- you can do with them as you see fit, I
11 guess.

12 **MR. CONNORS:** Thank you.

13 **MR. BOYD:** Thank you, Judge.

14 **THE COURT:** All right. Anything else on that point?

15 **MR. CONNORS:** No, Your Honor.

16 **THE COURT:** Mr. McNamara, you looked like you wanted
17 to the scene something.

18 **MR. McNAMARA:** No, Your Honor. I'm fine. We'll see
19 how the parties work it out and we'll go from there.

20 **THE COURT:** Okay.

21 All right. Mr. Vacco, you are up.

22 **MR. VACCO:** Thanks, Judge. Good morning.

23 **THE COURT:** Good morning.

24 **MR. VACCO:** So the prior discussion is somewhat
25 informative, I think, to our motion.

1 Although, as I -- I, you know, preparing for this
2 argument, you know, I recognize that there is -- there has been
3 a lot of shifting sands since we made our first application back
4 in June, I believe.

5 And in some fashion, I'm definitely fighting a rear
6 guard action here, trying to keep up with the changing
7 landscape.

8 I just want to make sure, as I tried to indicate the
9 last time we were here, that our present application is not
10 related to the advanced fee model.

11 As a matter of fact, Mr. McNamara had sent me an
12 e-mail over the weekend. I belatedly, because I was away on
13 vacation, responded to it yesterday, wherein he asked me if
14 statements that I made in Court at our last appearance, whether
15 he could rely on them.

16 Those weren't his exact words. But I had mentioned to
17 him in my responsive e-mail that our position is that your
18 present motion does not apply to the advanced fee model.

19 Having said that, our -- our motion is designed, much
20 as Mr. Connors' motion on behalf of the law firms, to separate
21 from the expansive nature of the preliminary injunction.

22 Both Atlas and Timberline, the -- you know, contingent
23 fee debt relief services and Versara.

24 At the core of it -- and I'm happy to hear the judge
25 say -- Court say at the outset Mr. Connors' presentation that

1 the Court does believe it has jurisdiction to modify the
2 preliminary injunction.

3 At the core of my position, our position on behalf of
4 Atlas and Timberline and Versara, is that they are entitled to
5 due process here.

6 A due process that they have not -- notwithstanding,
7 you know, all of the assertions, all of the allegations made by
8 the Government, they have -- those three entities, which as the
9 Court has recognized are still operating today.

10 And because the Receiver's mandate is to operate these
11 businesses, if he thinks that he can do so, both compliantly and
12 profitably -- put aside the profitable piece for a moment.

13 It seems that the threshold of consideration for the
14 Receiver is whether or not they -- they are compliant.

15 As the Court is well aware, that Atlas and Timberline
16 has been servicing the contingent fee clients since the -- the
17 imposition of the PI.

18 The Court is probably not as well aware, but cognisant
19 of the fact that Versara continues to operate to service the
20 loans that it had previously made.

21 And -- and that's what -- why I think that, you know,
22 the concept the due process here for those three intensity is
23 critically important.

24 You know, just to rewind to where we were almost a
25 year ago, you know, the Government comes in with an ex parte

1 application based upon information that was three or four, five
2 years old.

3 Ex parte application to -- to -- Judge Vilardo grants
4 the TRO. It was the Government that decided the -- the content
5 and the theme and the course of the hearing that took place over
6 two days.

7 We didn't tell the Government what evidence to
8 produce. We didn't tell, you know, the Government what they
9 should focus on in terms of -- of all of the various
10 allegations.

11 **THE COURT:** Well, in fairness, I'm not sure the
12 plaintiffs -- I decided that, I think.

13 Somebody can correct me if I'm wrong, but I said the
14 hearing is going to be about the --

15 **MR. VACCO:** TSR.

16 **THE COURT:** -- the TSR.

17 **MR. VACCO:** Sure.

18 **THE COURT:** And that's what it was about.

19 **MR. VACCO:** But that -- but that is -- certainly goes
20 to my point.

21 Whether, you know, you directed it or that was their
22 strategy, at the end of the day -- that hearing over two days, I
23 mean, you sat here and you listened to it -- even in your
24 decision.

25 You know, I can remember that day that you came out

1 and rendered your decision, you were reading from the
2 transcript, so you paid close attention to -- you know, what was
3 the evidence that was introduced at that hearing.

4 Not a scintilla of evidence -- I'm not talking about
5 what they put in their papers. I'm talking about what they
6 deduced from the witness stand of referenced a common enterprise.

7 And it's not just enough to say that there is a common
8 enterprise. They have to show that -- you know, entities that
9 have commonality were also participating in the unlawful conduct
10 and they haven't shown that.

11 And that's why I go back to the premise that these
12 three entities today are still operating.

13 So while they say, oh, common enterprise, they haven't
14 connected the dots to show how the involvement of Atlas,
15 Timberline and Versara advanced the violation of the TSR.

16 So we -- we here today --

17 **THE COURT:** Well, I don't -- I don't know that that's
18 the theory that they are operating under.

19 It's more these entities that you are representing,
20 they are assets. They were created with money raised by the
21 individual defendants by charging advanced fees.

22 That that's why they are in.

23 **MR. VACCO:** But they haven't proved any of that,
24 Judge.

25 **THE COURT:** Well --

1 **MR. VACCO:** They -- they have -- those are their
2 allegations. They have not proved -- so, for instance, in the
3 context of Versara, the Government --

4 **THE COURT:** We're not at trial. We're only at -- they
5 asked for a preliminary injunction.

6 **MR. VACCO:** But as I -- I understand the Receiver's
7 application, the Receiver's application is -- the requests for
8 instructions essentially is to wind down the entire business.

9 I'm not so sure how -- how he winds down Versara. And
10 it's in the context that we bring our application -- in the
11 context of the Receiver's application to wind the businesses
12 down.

13 We think that it's just fundamentally unfair,
14 certainly, with the denial of due process to wind down these --
15 these compliant businesses.

16 There is --

17 **THE COURT:** Who would -- who would -- if we let them
18 out from under the Receiver, who would run these businesses?

19 **MR. VACCO:** I -- that -- that's a -- that's a question
20 I'm not prepared to respond to today.

21 There are stakeholders, you know, certainly in Versara
22 that conceivably who are not participating, who are not subject
23 to the preliminary injunction, that might step forward to
24 operate Versara.

25 Versara is distinguishable, in my estimation, from

1 Atlas and Timberline. Not that I want to give up on Atlas and
2 Timberline, but I recognize that Atlas and Timberline are
3 further encumbered by virtue of the bank debt.

4 So when the Receiver has charges to operate it
5 compliantly and profitably, so -- and, again, I'm not conceding
6 the point.

7 But I understand that it's more logical to me that
8 Atlas and Timberline would be subject to the Receiver's power to
9 wind down, given the debt, because that's the profitability
10 piece, but that's -- those -- those the considerations don't
11 apply to Versara.

12 So I'm not prepared to name an individual today,
13 although -- and I don't want to inflame the Court or the
14 Government, but I've taken a look at the PI and I'm not sure
15 that the PI prohibits, for instance, even Ryan Sasson from
16 operating a lawful enterprise.

17 And I'm not suggesting that it's Ryan Sasson at the
18 moment, but I don't -- I don't necessarily believe that the PI
19 prohibits him from running a lawful enterprise, for that matter.

20 So my -- my concern here is the Receiver's
21 application, essentially, as I interpret it, to wind these
22 businesses down.

23 And wind these businesses down, while the ultimate
24 decision as to whether or not the TSR was -- was violated --
25 and, Judge, look it, you put a lot of time and energy into this.

1 had an outstanding loan balance to UBS and credit Sies
2 (phonetic) of about \$83 million.

3 During the period of time where we've overseen the
4 operations, we brought in a new servicer, we've done all of
5 those things, we paid down principal of \$43 million.

6 We paid interest of another \$6.25 million. In other
7 words, we've paid about \$50 million of that UBS debt down in the
8 secondary debt from the company called Sies.

9 So we have operated these businesses. We -- you know,
10 as you know, because we had the bank here and we were talking
11 about running out Atlas and Timberline.

12 Not getting a new customers, but running it out over
13 the next two years, which is something that we continue to talk
14 to the banks about.

15 And that way, the banks continue to be paid. At the
16 end of the day, Your Honor, based upon everything I've seen, the
17 banks are never going to be made whole.

18 And we aren't going to generate enough income from the
19 operation of the business to give any consumers relief from
20 this.

21 I think the banks' have a senior lien of more than 30
22 million. I heard Mr. Beltz say at one point during a hearing 42
23 million.

24 We're -- we're never going to generate that through
25 Atlas and Versara, but we have been able to operate those

1 businesses.

2 We're going to continue to operate those businesses,
3 when it -- while it makes sense to continue to negotiate debts.

4 We are not seeking new customers and don't intend to
5 seek new customers. And, frankly, I'm not sure if we didn't
6 have that loan consolidation, the phony loan consolidation
7 letter that we could generate customers at a -- at a level
8 necessary to continue to operate.

9 So I haven't addressed any of Mr. Vacca's legal
10 points. I think we do that in our papers and I'm not concerned
11 about any of the points that he raised.

12 **THE COURT:** Where -- where are you with the settlement
13 with the bank?

14 **MR. SANDERS:** We continue -- we still have a draft.
15 It's gone back and forth several times. We are still in
16 discussions.

17 I would like to have moved them more quickly, but we
18 are still talking to them. I think if our request for
19 instruction, which is I know not on the calendar, but is a
20 separate issue, now that the law firms withdrawing, our request
21 for instruction has no opposition.

22 As Mr. Vacco indicated, he doesn't oppose that law
23 firm debt relief model. Mr. Connors, I believe, does not object
24 to that.

25 And given that the law firms are now reaching out to

1 consumers and saying we're withdrawing, now it's time for us to
2 reach out to those consumers.

3 And you may recall about half of the consumers, we
4 have no active payment plan, right?

5 So what we do is we reach out to them and say the next
6 60 days, we're going to continue to provide you customer
7 service.

8 Go to your portal. Get all the information you -- you
9 need about your debts. Any of your outstanding debts remain
10 your responsibility.

11 We're not negotiating any debts, but we're going to
12 send you back the money -- we're going to contact Global and
13 Graham, the payment processors, and we're going to ask them to
14 return the money in your account.

15 So that whatever funds are there, you get back right
16 away. That's our -- that's our thinking on the RFI. So that's
17 one half of the consumers on the law firm debt relief model.

18 The other half of the consumers of the law firm debt
19 relief model about 28,000, at least as of a few months ago, they
20 have got a payment plan.

21 So our intention is to continue to provide customer
22 service to those folks until their payment plan ends.

23 And so how do we fund that? Well, we're funding that
24 through Atlas and Timberline. And that will be how we will
25 continue to fund it.

1 We should be able to shrink down the customer service
2 after 60 days, after this first big group, we return their
3 money.

4 But we're still going to have an obligation to
5 remaining consumers over the life of their payment plan.

6 So that, again, is what Atlas and Timberline can allow
7 us to do. It will also allow us to pay the banks and that's --
8 that's our plan.

9 You know, in our request for instruction, Judge, which
10 I know is not on the calendar today, but is very well related to
11 the withdrawal issue.

12 Have I answered the your questions, Judge?

13 **THE COURT:** Yes.

14 **MR. McNAMARA:** Thank you.

15 **THE COURT:** Mr. Sanders.

16 **MR. SANDERS:** I'll be brief, Judge. Our position is
17 that the Receiver should be running these business that are
18 subject to the SFS's latest motion.

19 Versara is a named defendant. We have submitted
20 evidence that they took unlawful fees.

21 We submitted evidence that they were actually involved
22 in the deception. They paid millions of dollars to a lead
23 generator.

24 The due process arguments that Mr. Vacco mentioned
25 were raised only in reply. We don't think that we think the

1 caselaw here is clear -- you know, we didn't get a chance to put
2 it in our papers that an evidentiary -- evidentiary hearing is
3 not required in every instance to satisfy --

4 **THE COURT:** Do you want to reply to Mr. Vacco's
5 papers?

6 **MR. SANDERS:** No, Judge. We don't feel it's necessary
7 at this point, but we don't think that a hearing is required in
8 every instance.

9 And to your point, Judge, we think that the parameters
10 for the hearing were set by Your Honor. We presented what you
11 wanted to hear.

12 And we think that it got to the heart of the issue, so
13 I don't have anything further, unless you have questions for me.

14 **THE COURT:** Well, I'll have you file something in
15 response.

16 So if he didn't raise that until the reply brief, I
17 want to hear from you. You say there is lots of cases. I'm not
18 going to go out and find them that's your job, okay?

19 **MR. SANDERS:** Okay, Judge, I can -- I can give you one
20 now on the record, if you want.

21 **THE COURT:** No. You can lay it out for me all in your
22 papers, okay?

23 **MR. SANDERS:** Thank you, Judge.

24 **THE COURT:** All right.

25 **MR. BOYD:** If I could very, very briefly, Judge?

1 **THE COURT:** Sure.

2 **MR. BOYD:** So, I mean -- I think Mr. Vacco has
3 conceded that -- that Atlas/Timberline, they are -- I mean, they
4 were part of this enterprise, right?

5 You had the -- you had the client service
6 subsidiaries. You had Atlas/Timberline. They were serviced by
7 the same staff, worked out of the same office, had the same
8 owners, supervisors. All of the common enterprise elements were
9 there.

10 As to Versara, it's named as a defendant. You
11 don't -- you don't need a common enterprise allegation as to
12 that.

13 And, frankly, all Versara did was it provided loans to
14 customers of the law firm model, right?

15 So customers of the law firm model would go, they
16 would make their payments on time. Strategic would realize that
17 these were people -- that these were people who were going to
18 pay regularly.

19 So they would send them over to Versara, so they could
20 get the advanced fees front-loaded and they could also make
21 money on the loan.

22 That's all Versara did. It was part and parcel of the
23 enterprise. Another way to make them money. That's why Versara
24 was named in the complaint.

25 So Versara was certainly properly enjoined and

1 shouldn't be let out of the receivership.

2 But Atlas/Timberline, it is extremely common in a case
3 like this, in a receivership case, where there is other smaller
4 entities.

5 You know, you have an accounting entity. You have an
6 entity that -- that handled the mail. That were all -- when a
7 common enterprise is alleged and the factors are met, they are
8 all put in the receivership properly together.

9 That happens all the time in these types of cases and
10 that caselaw was cited in our TRO and PI application and that's
11 why these entities were properly included.

12 And I will say although I know Your Honor said you've
13 already you already think that you have jurisdiction to modify
14 the PI and I won't dispute that, but I will note that Atlas and
15 Timberline are specifically named as receivership defendants by
16 name in the PI, which is not true of Royal and Hailstone.

17 And I think it is a distinguishing factor. I mean,
18 that order is.

19 **THE COURT:** I -- I think so, too. I -- if there
20 was -- if there was a clearcut basis where they shouldn't be in
21 the case, I would let them go, but I don't think that's the
22 case, right?

23 So --

24 **MR. BOYD:** That's all I had, Judge, unless you have
25 any questions.

1 **THE COURT:** Something you just said I was going to ask
2 you, Mr. Vacco.

3 **MR. VACCO:** Your Honor, just two points of
4 clarification. I think Mr. Boyd overstates my position. I am
5 not conceding that Atlas and Timberline are part of the common
6 enterprise to violate the TSR.

7 **THE COURT:** I didn't think you were, because that
8 would -- that would be the end of your argument, right? So --

9 **MR. VACCO:** And the other point -- so as I mentioned
10 when I got to the podium, you know, the circumstances have --
11 have shifted from the time of our original application, which is
12 Docket 374-1, which we filed on June 7th.

13 And in that application, where we indeed do also
14 address Versara and the contingent fee businesses, we do raise
15 in our papers the due diligence -- I'm sorry -- the due process
16 argument.

17 So we have previously raised that in the context of
18 these three entities.

19 **THE COURT:** Okay. Now, Mr. Vacco, is your argument
20 that you also argue that you don't want Versara DST 2019-2,
21 Strategic LD and Celgramacy 2 (phonetic) to be brought in by the
22 Receiver, as receivership entities, I guess.

23 **MR. VACCO:** Correct.

24 **THE COURT:** Now, is that just an extension of the
25 argument you've already made?

1 **MR. VACCO:** Yes, sir.

2 **THE COURT:** Okay. All right. There is nothing --

3 **MR. VACCO:** Except that -- except that the nuance for
4 the Strategic -- the one with the -- the -- so there is two
5 Strategic/Versara related entities.

6 One is totally separate and distinct from a corporate
7 perspective of the Strategic families. And that's the entity
8 where the proceeds -- the lending proceeds that came from the
9 lender went into this -- this entity.

10 Which then provided those resources up the chain to
11 Versara. The Versara entity that was actually then loaning the
12 money to the -- to the debtors.

13 **THE COURT:** And is that entity, the Versara DST?

14 **MR. VACCO:** Yes, sir.

15 **THE COURT:** Okay.

16 **MR. VACCO:** So it's only purpose -- it's only function
17 was to be the receptacle of the proceeds that came from the
18 lender. And there were two lenders in -- that are implicated
19 there.

20 **THE COURT:** The two banks.

21 **MR. VACCO:** Two banks, correct. And then the other
22 Strategic-related entity is the payroll entity that was covering
23 payroll for Versara the Gramacy (phonetic) and --

24 **THE COURT:** Is that Strategic LD?

25 **MR. VACCO:** Yes, sir.

1 **THE COURT:** And what did they do again? I'm sorry.

2 **MR. VACCO:** Payroll provider to Versara. They were --
3 they were --

4 **THE COURT:** The -- they paid the Versara employees?

5 **MR. VACCO:** Correct. And they and Gramacy. And the
6 Court is somewhat familiar with Gramacy, I think, by virtue of a
7 motion that was made months ago.

8 I think it was Mr. Connors' motion for portions of --
9 of it's -- Gramacy is essentially the captive insurance policy.

10 And Mr. Connors, on behalf of the law firms, had
11 previously made an application for the law firms to be repaid --
12 you know, their legal fees to be paid out of that captive
13 policy.

14 That policy is not an asset that's subject to the
15 liens of the banks.

16 **THE COURT:** You say it's not an asset that's subject
17 to the lien of the banks?

18 **MR. VACCO:** Of -- of --

19 **THE COURT:** Not that it's not an asset, period?

20 **MR. VACCO:** It's not an asset that's -- that's subject
21 to the liens of Valley and --

22 **THE COURT:** Right. Okay. I got you.

23 **MR. VACCO:** Yes.

24 **THE COURT:** Okay.

25 **MR. VACCO:** Well, Mr. Connors is saying it might not

1 be an asset. It -- it is a captive insurance policy, so I -- I
2 don't know exactly where the proceeds came from just -- so you
3 know, as the Court is aware.

4 **THE COURT:** You don't know where the money came from
5 for this insurance -- policy, where the money would be paid out
6 of -- well, if to get out of the insurance company, you don't
7 know who funded it?

8 **MR. VACCO:** I -- I -- I don't with clarity, but it --
9 it is conceivable that it was funded by Strategic.

10 It was -- it was -- the policy -- the -- it's a
11 captive insurance policy designed --

12 **THE COURT:** I -- I don't -- I guess it would be it's
13 not only conceivable. That is where the money came from, right?

14 **MR. VACCO:** I'm -- I'm only hedging --

15 **THE COURT:** -- and that --

16 **MR. VACCO:** -- my bets --

17 **THE COURT:** -- and I think that --

18 **MR. VACCO:** -- because I don't know --

19 **THE COURT:** -- because I think that would clearly make
20 it a Strategic-related entity, that's subject to receivership.

21 **MR. VACCO:** Again, I don't -- I can't -- I'm hedging
22 my comments, only because I don't know precisely where the money
23 came from.

24 It does make sense to me that it was -- that the
25 resources did emanate from a Strategic-related entity.

1 **THE COURT:** How much -- how much money is in that pot?

2 **MR. VACCO:** Well --

3 **THE COURT:** Do you know? I'm assuming it's millions.

4 **MR. VACCO:** It's over -- it's over a million and a
5 half dollars. It's a substantial -- it's a substantial sum.

6 And frankly, Judge, as I mentioned somewhat
7 gratuitously the last time we were here, because that's not a --
8 an asset of the enterprise that's subject to the banks' liens,
9 you know, frankly, I think that, as the Court is still
10 contemplating my fee application, it's conceivable that our fees
11 can be paid out of that pot of money.

12 **MR. BOYD:** I'll -- I'll just briefly, Judge. I mean,
13 I think some of this is -- is making the point.

14 When we bring these cases, you have different
15 subsidiaries that do different functions, but they all -- right,
16 one is providing payroll.

17 One is an insurance policy that's funded by the
18 enterprise. They are all there to do one thing, which is
19 support the overall business, right?

20 And I think -- I don't think there is any question
21 that all of these entities meet the definition of receivership
22 defendant. These three entities we're talking about.

23 What Mr. Vacco wants you to do now is to go back to
24 the PI that's up on appeal with the Second Circuit and rewrite
25 the definition of receivership entity.

1 Because these entities were all owned, controlled by
2 Strategic and their affiliates. And that's the test that's in
3 the preliminary injunction.

4 So you basically have to go back and modify a
5 substantial provision that was put there for a reason, which is
6 to sweep up, right?

7 So that the DST entity that has all the money -- well,
8 obviously, if we're trying to get consumer restitution, we would
9 certainly like the entity that has all of the money to be part
10 of the receivership estate, right?

11 Not just the one who is actually providing the
12 business services, but the entity who is getting the money.

13 And the caselaw makes it pretty clear that the Court
14 has jurisdiction to do that. And that's why those entities are
15 properly named as and made part of the receivership estate.

16 **MR. VACCO:** So, Your Honor --

17 **THE COURT:** Well, they weren't named in the complaint
18 or anything. The Receiver wants to bring them in.

19 **MR. BOYD:** Named by the Receiver, Judge.

20 **THE COURT:** Yeah.

21 **MR. BOYD:** Sorry.

22 **THE COURT:** Right. Yeah. Okay.

23 **MR. VACCO:** So I don't -- I don't mean to open up
24 another can of worms here, but why not.

25 So I was somewhat impressed by the summary that was

1 provided by Mr. McNamara in terms of financial performance of
2 not only the contingent Atlas and Timberline, but also of
3 Versara.

4 And what's somewhat staggering to me to understand
5 that nearly \$50 million -- so the receivership has only been in
6 place since -- you know, through the TRO since January, but
7 pursuant to the PI, since March.

8 I mean, \$50 million is a staggering amount of money.
9 So he's paid down debt 43 million and paid interest of
10 \$7 million.

11 He doesn't articulate, you know, what other proceeds
12 were generated as a result of servicing -- of servicing those
13 loans.

14 And perhaps this is an argument to be made by, you
15 know, others who -- you know, whether it's Mr. -- Mr. Photiadis
16 or Mr. Personius or even the law firms.

17 But from the perspective of a settlement and the
18 perspective of a resolution, if this is -- if Versara is a -- a
19 lawfully -- is a lawful enterprise that was not implicated in
20 the TSR, despite what the Government -- you know, the Government
21 continues to -- to spew their allegations and summarily say
22 evidence, but it's just their allegations.

23 There has been no evidence educed about these
24 allegations that they raise about the interconnectiveness of the
25 common enterprise.

1 So from -- from my perspective, why are -- shouldn't
2 the people who own the lawful enterprise, IE Versara, be able to
3 control it, so that maybe the 50 or 60 or \$70 million or
4 whatever is generated from the operation of that -- that
5 enterprise could be part and parcel to the negotiations and the
6 discussions about how to sell -- settle this case?

7 But I sense that what the Government now wants to do,
8 they want to take the proceeds of that lawful enterprise and
9 pocket it after they have paid all their expenses and paid the
10 banks and pocket all -- all the rest.

11 And in the process, they would still be demanding
12 hundred plus million dollars from -- from the other defendants
13 in this case.

14 And I think that -- again, I keep coming back to
15 the --

16 **THE COURT:** Well, that -- that money that the Receiver
17 paid, that was -- that wasn't your money or your clients money.

18 **MR. VACCO:** No, no.

19 **THE COURT:** That money belonged to the bank. All he
20 was doing was paying off the bank.

21 **MR. VACCO:** Well --

22 **THE COURT:** It's not like you would have had that
23 money or should have had that money or --

24 **MR. VACCO:** But, Judge, what we're -- what we're
25 missing here is, you know, the full picture.

1 So I'm surprised that in a ten month period that the
2 banks were paid -- the underlying debt was only in the \$90,
3 \$95 million range.

4 So in a ten month period, he's paid he's paid off half
5 of the debt. I'm pretty sure that that's in acceleration of
6 paying -- paying that debt.

7 And my point is that to continue to service those
8 loans will continue to generate fees that are either going to
9 paying down the debt -- and at some point, that's finite.

10 And there is going to be chicken left on the bone and
11 the interest is going to go away, why shouldn't the owners be
12 able to control those assets so that they could use those assets
13 as part of their negotiations to settle this case?

14 But what they are looking to do, they want to sweep
15 those proceeds and still turn to the other defendants and say
16 we're demanding \$140 million from you.

17 And that's the fundamental unfairness for a lawful
18 enterprise.

19 **MR. BOYD:** I wish that were true, Judge. The Receiver
20 can speak to this, but the money he's talking about is going to
21 a secured lender.

22 On the Versara end is UBS and CIBC counsel is here and
23 they can speak to this, but I think for most entities, whatever
24 is left after UBS gets paid, for a lot of them CIBC has a
25 lien -- a backup lien basically after UBS gets paid.

1 So I wish that -- I mean, the reason we brought this
2 case is to have consumer restitution. So my sincere hope is
3 that there is money left over in these enterprises for consumer
4 restitution.

5 But looking at the numbers, I certainly don't think
6 that's the case sitting here right now.

7 **THE COURT:** And depending on how things go, you are
8 going to have to fight with the bank --

9 **MR. BOYD:** Absolutely --

10 **THE COURT:** -- at the --

11 **MR. BOYD:** -- Judge.

12 **THE COURT:** Right.

13 **MR. BOYD:** Just briefly, to Mr. Vacco's point, I would
14 point him back to paragraph 159 in the complaint, where we
15 allege that Versara Lending LLC received fees from debt relief
16 consumers.

17 That's according to records from Ram, which is
18 Reliant, one of these processors.

19 Versara also received 177 million in incoming wires
20 and that transfers from various SFS entities.

21 It got -- it got fees and it received 100 -- 177
22 million from other SFS entities. So it's named in the
23 complaint.

24 They had their hearing. I mean, these due process
25 arguments, Versara was named as a defendant at the time of the

1 hearing.

2 We had the hearing. The Court made its ruling on the
3 TSR issue and there is an allegation in the complaint that they
4 got fees from debt relief customers, just like any of these
5 other entities.

6 Which is why they are named and which is why they are
7 part of the receivership. So, you know, as to Versara, I
8 don't -- it's not like Atlas/Timberline, where it's named as a
9 receivership defendant solely.

10 Versara is a defendant. I mean -- I mean, we sued
11 them. So I don't think there is any due process issue as to
12 Versara.

13 They are properly subject to the preliminary
14 injunction.

15 **THE COURT:** Okay.

16 **MR. VACCO:** Judge, I'm happy that he makes my argument
17 for me. He's making my argument.

18 The mound of papers that they presented to Judge
19 Vilardo and -- and the 65 depositions that they did in the month
20 of January, leading up to the -- to the preliminary injunction
21 hearing, they got one paragraph -- one paragraph in the amended
22 complaint that mentions Versara.

23 And -- and Mr. Boyd, you know, talks about the -- you
24 know, fees. So, you know, he makes no connection to the
25 illegality of those fees.

1 So now all of a sudden, because Versara was -- was
2 accepting fees from other Strategic enterprises, that those fees
3 are inherently unlawful.

4 He hasn't connected the dots. One paragraph in the
5 entire complaint that mentions Versara. That's why I'm asking
6 for due process here.

7 **MR. SANDERS:** Judge, the -- the evidence that we
8 submitted here, we had one of our data scientists go through the
9 payments that Ram received and \$180,000 of those payments went
10 directly to Versara.

11 So these are not loan payments. These are debt relief
12 payments that went directly to Versara.

13 Now the -- the fee schedules, which are part of the
14 evidence that was submitted at the hearing, show that those fees
15 were collected from day one from the consumers.

16 So these are unlawful fees. The fee schedules also
17 show that they are not proportional to any settlement, right?

18 They are just, here's your monthly amount. You pay it
19 each month. It's not proportional to any kind of a settlement
20 that was negotiated.

21 So those fees are unlawful. We have submitted
22 evidence as to that -- the legality. And in addition,
23 Versara -- we submitted evidence showing that Versara made a
24 large payment.

25 We submitted bank records showing that Versara made a

1 payment of millions of dollars to a Lee Generat (phonetic). So
2 Versara is implicated in the deception that drew the consumers
3 in in the first place.

4 The Receiver made mention of the fact that with --
5 without the deceptive claims about the -- the loans in the first
6 instance, that Versara wouldn't be able to operate lawfully and
7 profitably.

8 So the idea that Versara hasn't had due process or
9 that there wasn't evidence submitted is just wrong.

10 **MR. VACCO:** Your Honor, I don't -- I don't mean to
11 have the last word here -- well, I do, but, respectfully, and
12 they can respond all they want to it, but, you know, at -- at
13 the end -- at the end of the day, what we're what we're talking
14 about here is -- you know, to hold Versara responsible for
15 conducting the lawful business.

16 I mean, at the end of the day, all of these dastardly
17 deeds that Mr. Boyd and Mr. Sanders are pointing to, the
18 Receiver has had an obligation since jump street here to operate
19 the business.

20 If he decided that these factors -- that these factors
21 that they raise rose to the level of making the operation of the
22 company unlawful, then he would be here telling the Court that
23 they can't lawfully operate Versara.

24 We have not heard the Receiver talk about the
25 inability to operate Versara lawfully. Notwithstanding their

1 allegations.

2 And they can, you know, couch it as evidence all they
3 want. But at the end of the day, they have made no -- they have
4 made no evidentiary connection to Versara operation.

5 Even -- even the -- you know, paying for the lead
6 generation, why is that inherently unlawful?

7 They are creating the impression to the Court that all
8 of that -- that these legitimate business steps, because of the
9 violation of the TSR, make everything else that flows inherently
10 unlawful.

11 And to me, that's why I think we need a due process
12 hearing.

13 The Court -- we still don't fully understand -- the
14 Court doesn't fully understand, respectfully, exactly how
15 Versara operates.

16 You are -- you are relying on what I'm saying, what
17 the Government is saying and what the Receiver is saying, but
18 there has been no evidence in terms of how Versara operates.

19 So they can say that they have taken fees, but they
20 have not tied the timing of those fees to settlements.

21 And whether or not those fees then, therefore, were
22 truly advanced fees. Contingent fee is not unlawful.

23 **MR. BOYD:** It's undisputed, Judge, that Versara made
24 loans to advanced fee customers.

25 I don't -- I don't think Mr. Vacco would even dispute

1 that. I mean, that's what they did.

2 Since the Receiver has been operating the company,
3 they haven't been making any loans.

4 What's been happening, the people have been paying
5 back their existing loans. That's what -- when you say the
6 Receiver is operating Versara, that's what he means.

7 Basically, is that they are collecting loan payments
8 and paying them over to UBS, who is the learned who financed
9 them.

10 He's not going out and making new loans to advanced
11 fee debt relief clients, which is what we claim was the
12 problematic conduct here, right?

13 Making these loans in the first place. The
14 allegations are there. Versara been named as a defendant since
15 jump street.

16 They had a hearing. The fact that Mr. Vacco wants a
17 do-over, frankly, he's not entitled to it.

18 And the order that came out of that hearing is up on
19 appeal with the Second Circuit right now. They are named as a
20 defendant. The order is up on appeal.

21 To give them another hearing basically redoing the PI
22 that's up on appeal with the Second Circuit, just doesn't make
23 any sense to me.

24 **THE COURT:** Anybody else have anything you want to
25 say?

1 Mr. McNamara brought up about his -- about his
2 notice -- what you --

3 **MR. SANDERS:** Request for instruction, Judge.

4 **THE COURT:** Request for instruction. I think he said
5 nobody objects.

6 Does anybody object at this point or --

7 **MR. CONNORS:** I do not.

8 **MR. VACCO:** To make the record clear, I don't. I
9 don't either, as it relates to the advanced fee model.

10 **THE COURT:** Mr. Personius?

11 **MR. VACCO:** I need to be refreshed on what the
12 instruction is that's being requested.

13 I apologize for not knowing, but I can't sit here and
14 say I don't object, because I don't recall what it is.

15 **MR. BOYD:** It's essentially to wind down the advanced
16 fee side -- side of the business.

17 **THE COURT:** Well, it's not fair to corner
18 Mr. Personius.

19 **MR. BOYD:** Sure. Sure. Yeah.

20 **THE COURT:** This wasn't on the -- this week -- we --
21 this wasn't on the -- but --

22 **MR. BOYD:** Yeah. No. I just thought I would help
23 him.

24 **THE COURT:** If we can --

25 **MR. SANDERS:** Your Honor, if I might --

1 **THE COURT:** I'm trying to think of an efficient way --
2 if everybody is going to go in the tank on that, if we could
3 just get it resolved, so we can send out this instruction.

4 **MR. SANDERS:** Your Honor, if you like, I can reach out
5 to Mr. Personius and the other parties and make sure that they
6 don't have an objection.

7 I can tell you that when we filed our request for
8 instruction some time ago, only two parties objected,
9 Mr. Connors and Mr. Vacco.

10 Both of them now indicated that they don't, which is
11 why I wanted to raise it to the Court.

12 I -- at the time we filed our request for
13 instruction --

14 **THE COURT:** I don't know if anybody -- would anybody
15 else have standing to object to the --

16 **MR. SANDERS:** I don't think so.

17 **THE COURT:** -- to the --

18 **MR. SANDERS:** I don't believe, so because --

19 **THE COURT:** Okay. Why don't you double check because
20 I would like to get that -- because, Mr. McNamara, you do your
21 job diligently and you bring it up every time you come into
22 Court, so I want -- I would like to get that off my plate, if I
23 could, okay?

24 **MR. PERSONIUS:** Judge, if it's helpful, I don't expect
25 we will object. I just --

1 **THE COURT:** Okay. Yeah. Well, Mr. McNamara will
2 contact everybody and just make sure that's true and come back
3 to me and let me know, all right?

4 **MR. SANDERS:** I will, Your Honor.

5 **THE COURT:** Okay. I want a brief from the Government
6 on this new process argument which you said they raised in their
7 reply.

8 Not -- Mr. Vacco says he raised it earlier, but, so --

9 **MR. SANDERS:** And, Judge, just for the record, we did
10 address to the extent he's talking about 374, we did address
11 that in 380, so --

12 **THE COURT:** I'll keep that in mind when I'm reviewing
13 your new brief --

14 **MR. SANDERS:** That's fine, Judge.

15 **THE COURT:** -- on the -- on the issue, okay?

16 What's -- are we scheduled -- when's the next time
17 we're scheduled to come in?

18 We're going to start having a weekly Wednesday
19 meeting --

20 **MR. BOYD:** I think, it's the tenth.

21 **THE COURT:** -- on this case I think.

22 **MR. BOYD:** The 10th, Judge.

23 **THE COURT:** I'm sorry?

24 **THE CLERK:** December 10.

25 **THE COURT:** Okay. Can I get a report back on this